

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 149 of 1988

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

NATHALAL N JOSHI

Versus

STATE OF GUJARAT

Appearance:

MS DAXA R VYAS for Petitioner
MR JM THAKORE Advocate General assisted by
MR PREMAL JOSHI AGP for Respondent No. 1
MRS SS PATEL for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 18/08/2000

ORAL JUDGEMENT

Learned advocates Ms. Vyas appearing for the petitioner and Mrs. S.S Patel appearing for the respondent no. 2 are not present on call. Heard the

learned Advocate General for the State.

2. The petitioner before this Court is an employee of the Vanthali Nagar Panchayat [hereinafter referred to as, 'the Panchayat'] and claims that the salary of the employees of the Panchayat shall be paid by the State Government by advancing necessary funds/grant to the Panchayat. It is the claim of the petitioner that he was originally appointed by the then Vanthali Municipality, which on introduction of the Gujarat Panchayats Act, 1961 (hereinafter referred to as 'the Act') has been converted into a Nagar Panchayat. The petitioner being the employee of the converted Municipality, is entitled to the salary in the scale determined by the State Government for its employees, as revised from time to time and the Government is duty bound to pay such salary. The reliance is placed on the judgment of the Hon'ble Supreme Court in the matter of State of Gujarat & Anr. v. R.K Soni & Ors., AIR (1984) SC 161.

3. The State Government has contested the petition. It is contended that all Panchayats and Municipalities are distinct local authorities and have power to levy taxes, fees and charges. They have their own source of income and they are supposed to bear their own expenses. It is contended that on introduction of the Act, certain functions of the State Government were transferred to the Panchayats alongwith the staff. It is this staff alone ie., the former government servants allocated to various Panchayats, expenses of whose salary is borne by the State Government and for rest of the employees of such Panchayats, the Government bears the expenses to the tune of fifty per cent of the Dearness Allowance due and payable to such employees. The State Government has denied its liability to bear the expenditure of the salary of the staff of the Panchayats constituted under the Act. It is further stated that no function of the State Government has been transferred to the Nagar Panchayats and no employee of the State Government has been allocated to any of the Nagar Panchayats. The State Government is, therefore, not required to bear the expenditure on the salary of the staff of the Nagar Panchayats. Reliance is placed on the judgment of this Court in the matter of Ramanlal Keshavlal Soni & Ors. v. State of Gujarat & Ors., [AIR (1977) Guj. 76] and of the Supreme Court in the matter of State of Gujarat v. R.K Soni & Ors, [AIR (1984) SC 161].

Clause 18 of Section 2 of the Act defines 'Nagar Panchayat' to mean, 'a Nagar Panchayat constituted under the Act'. Section 3 thereof provides inter alia that

there shall be a Nagar Panchayat for each Nagar in each district. Section 7 thereof provides inter alia that a Nagar Panchayat shall be a body corporate by the name of, 'the _____ Nagar Panchayat'. Sub-section 5 thereof empowers every Panchayat inter alia to acquire and hold property both movable and immovable and to lease, sell or otherwise transfer any moveable or immoveable property which may have become vested in it. Section 9 of the Act empowers the Government to declare a local area to be a Nagar, if the population of such local area exceeds ten thousand but does not exceed twenty five thousand. Section 13 provides for the Constitution of the Nagar Panchayats. Sections 178 to 181 of the Act provides for levy of taxes and fees, inter alia, by the Nagar Panchayats. Section 204 of the Act provides that 'subject to the rules, which the State Government may make in this behalf, the expenditure towards the pay and allowances of and other benefits available to an officer or servant of the Panchayat Service serving for the time being under any Panchayat shall be met by that Panchayat from its own fund.' It is submitted that no rules have been framed by the Government under Section 204 of the Act. The Panchayat has its own source of income and it is its responsibility to meet the expenditure towards the pay and allowances and other benefits available to its servants. The claim of the petitioner for payment of salary by the State Government is, therefore, contrary to the statutory provisions and requires to be rejected.

In the matter of Ramanlal Keshavlal Soni & Ors. [Supra], the petitioners were the employees of different Municipalities constituted under the Bombay District Municipalities Act, 1901. After the enactment of the Act, such Municipalities ceased to exist and certain consequences also ensued. One of the consequences was that interim gram or nagar panchayats, as the case may be, came into existence in such local areas and all officers and servants in the employment of the extinct municipalities became officers and servants of the interim panchayats so constituted under the Act. On constitution of the Gram or Nagar Panchayats, as the case may be, the said petitioners were allocated to the Panchayat services constituted under the Act. The petitioners had prayed for appointment in the equivalent post in the Panchayat services, fixation of their seniority and pay scales and allowances in the equivalent posts with retrospective effect, payment of difference in salary and allowances to extend to the petitioners, the benefit of pay revision as per the recommendations of the First and Second Pay Commissions; to extend them the benefit of Dearness Allowances, House Rent Allowances,

Compensatory Local Allowances, Travelling Allowances, Leave benefits, Medical Allowances, Gratuity, Pension and other service benefits, etc., which were available to other Panchayat servants. While allowing the claim of the petitioners, the Hon'ble Court, in paragraph 23 of the judgment, observed that, '...Be it noted also at this stage that this was done in spite of the fact that the State Government had not to bear the additional expenditure on account of such pay revision in case of all such officers and servants and that such burden was to be borne in some cases to a large extent by the panchayats concerned.' The question was whether petitioners who were the employees of the erstwhile municipalities were entitled to identical treatment as was given to the other servants of the dissolved district local boards, district school boards or Government servants allocated to various Panchayats. Further, in paragraph 69 of the judgment, the Court has observed that, '...As earlier pointed out, under Sec. 204, subject to the rules which may be made by the State Government in that behalf, it is statutory obligation of the concerned panchayats to bear the expenditure towards the pay and allowances and other benefits of all officers and servants serving for the time being under them. No rules have been framed under Sec. 204 by the State Government and, therefore, in relation to all officers and servants the statutory obligation in respect of such expenditure is on the concerned panchayats.' Similarly, the Hon'ble Supreme Court in the matter of State of Gujarat & Anr. v. Raman Lal Kesav Lal Soni & Ors. [Supra] has, in paragraph 28 of the judgment observed that, '....Next, the expenditure towards the pay and allowances of officers and servants of the Panchayat Service, serving for the time being under any Panchayat has, no doubt, to be met by the Panchayat from its own funds, but, as we have seen; the fund consists substantially of sums contributed or lent by the State Government and of the proceeds of any tax or fee imposed by or assigned to the Panchayat under the Act.' Hence, while holding that the servants of the extinct municipalities, on their allocation to Panchayats constituted under the Act, were entitled to the same service benefits as were admissible to other Panchayat servants, the Courts were conscious about the liability of the Panchayats to bear the expenditure of the salary of such allocated servants. Section 157 of the Act empowers the State Government to transfer the powers, functions and duties relating to any matter as are exercised or performed by the State Government or any officer of the Government to a District Panchayat and enjoins upon the Government on such transfer to allot to

the District Panchayat such fund and personnel as may be necessary to enable the District Panchayat to exercise the power and discharge the functions and duties so transferred. Evidently, the fund mentioned in this section is in respect of the discharge of such duties and performance of such functions, as are transferred by the State Government, by the District Panchayat. The funds referred to in the said section cannot be given an extended meaning so as to cover the salary of the entire staff of the District Panchayat. The claim of the petitioners that the State Government is duty bound to extend salary grant to the Panchayat is misconceived more particularly when no function of the State Government has been transferred to the Nagar Panchayats nor the former servants of the State have been allocated to Nagar Panchayats.

4. In view of the above discussion, the relief prayed for in this petition cannot be granted. Petition is dismissed. Rule is discharged. Parties shall bear their own costs.

Prakash*